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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,485	11/20/2003	Yasuyuki Momoi	520.43276X00	6677
20457 7590 11/23/2009 ANTONELLI, TERRY, STOUT & KRAUS, LLP 1300 NORTH SEVENTEENTH STREET SUITE 1800 ARLINGTON, VA 22209-3873				
EXAMINER NGUYEN, VI X				
ART UNIT 3731		PAPER NUMBER		
MAIL DATE 11/23/2009		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/716,485

Applicant(s)

MOMOI ET AL.

Examiner

Victor X. Nguyen

Art Unit

3731

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/22)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Response to Amendment

1. Claims 1 and 3-6 are pending in this present application

In response to applicant's amendment of 4/6/2009, the examiner has withdrawn all prior 35 U.S.C. 112, second paragraph objection.

Applicant's argument with respect to claim 1 has been considered but is moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Sanjay-Gopal et al US 6,187,018.

Claim 1: Sanjay-Gopal et al disclose a position indicating means 90 for indicating a position and a direction of a surgical tool, said position indicating means comprising a pair of laser beam emitting means 90a, 90b, figure 2c for emitting respective laser beams that intersect in a plane-like manner towards a surgical field; a three-dimensional position measuring means 24 for measuring a position and a direction of said surgical field and also the position and the direction of said surgical tool; a control unit 30 for controlling operation of said position indicating means and said three-dimensional position measuring means, wherein said position indicating means and said three-dimensional position measuring means being fixed on an

elongated head 22c, so that relative positional relationship there-between is constant; and wherein said direction for said surgical tool is given in a form of an intersection line (see col. 5, lines 65-67).

Claims 3-4: Sanjay-Gopal et al disclose the position measuring apparatus 90 is held on a stand 22, which is changeable in its position and direction by being movable while keeping the relative positional relationship between the position indicating means and the three-dimensional position measuring means 24, and wherein said position measuring apparatus is held by an arm (fig. 2a), the arm extending from a ceiling and being changeable in a position and a direction by being movable while keeping the relative positional relationship between the position indicating means and the three-dimensional position measuring means 24.

Claim 5: Sanjay-Gopal et al disclose the position measuring apparatus 24 is used for indicating a position and a direction of a surgical tool during a surgical operation.

Claims 1, 5-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Cosman US 6,405,072.

Claim 1: Cosman discloses a position indicating means 17, 18 for indicating a position and a direction of a surgical tool, said position indicating means comprising a pair of laser beam emitting means (LED emitters 20, 21, see col. 4, lines 39-42) for emitting respective laser beams that intersect in a plane-like manner towards a surgical field; a three-dimensional position measuring means (the area of element C1, col. 4, line 43) for measuring a position and a direction of said surgical field and also the position and the direction of said surgical tool; a control unit 34 for controlling operation of said position indicating means and said three-

dimensional position measuring means, wherein said position indicating means and said three-dimensional position measuring means being fixed on a frame 6, fig. 1 so that relative positional relationship there-between is constant; and wherein said direction for said surgical tool is given in a form of an intersection line (see col.19, lines 9-19).

Claims 5-6: Cosman discloses the position measuring apparatus 17, 18 is used for indicating a position and a direction of a surgical tool during a surgical operation and the apparatus further comprises means for calculating setting position and direction of the laser emitting means from the emit angle of the laser beam and a laser beam emitting position that is measured by the three- dimensional position measuring means (see col. 4, lines 48-67, col. 5, lines 1-35).

Conclusion

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X. Nguyen whose telephone number is (571) 272-4699. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, AnhTuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Victor X Nguyen/
Examiner, Art Unit 3731

/Anhtuan T. Nguyen/
Supervisory Patent Examiner, Art Unit 3731
11/20/09